

37 Am. Jur. 2d Fraud and Deceit § 53

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Fraud and Deceit

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III. Means of Perpetration

B. False Pretenses and Fraudulent Devices, Schemes, and Tricks

§ 53. Inducement to forgo enforcement of remedy

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

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[Fraud and deceit: Liability in damages for preventing bringing of action before its being barred by statute of limitations, 33 A.L.R.3d 1077](#)

The loss, due to fraud and deceit, of a right of action against one causing the death of a person, may be the basis for the recovery of substantial damages.¹ Where the parties stand in a relation of trust and confidence to one another, one who is induced to stay action by false representations can recover for the fraud notwithstanding that any right of action ex contractu is unenforceable because the statutory period of limitation has elapsed.²

On the other hand, it has been held that no action lies for fraudulently preventing a person injured by another's negligence from bringing an action therefor within the time allowed by the statute of limitations since the basis of recovery would be purely speculative.³ However, there is contrary authority holding that the maintenance of such an action is permissible and that the damages resulting from the fraud are not too remote and conjectural to be remediable.⁴ The view has been expressed that false representations inducing one to refrain from instituting a civil action where the necessity for timely institution of the action is known will not support an action for fraud and deceit.⁵

In diverse cases, a majority of the courts have held or recognized that where one having an enforceable legal right is fraudulently prevented from bringing an action thereon until barred by a statute of limitations, a cause of action will lie for the loss suffered in consequence⁶ although under the particular circumstances of several cases, a negative position has been taken with respect to the maintainability of such an action.⁷

A creditor cannot maintain an action against a third party for fraudulent representations inducing the creditor merely to

refrain from taking steps to collect the debt until collection has become impossible.⁸

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Footnotes

- ¹ Ware v. State Farm Mut. Auto. Ins. Co., 181 Kan. 291, 311 P.2d 316 (1957); Inman v. Merchants Mut. Cas. Co., 274 A.D. 320, 83 N.Y.S.2d 801 (3d Dep't 1948).
- ² Ott v. Hood, 152 Wis. 97, 139 N.W. 762 (1913) (attorney and client).
- ³ Whitman v. Seaboard Air Line Ry., 107 S.C. 200, 92 S.E. 861 (1917).
- ⁴ Urtz v. New York Cent. & H.R.R. Co., 202 N.Y. 170, 95 N.E. 711 (1911).
As to misrepresentation and fraud as affecting the running of the statute of limitations, see Am. Jur. 2d, Limitation of Actions §§ 164 to 168, 373 to 376.
- ⁵ Jackson v. Jackson, 313 S.W.2d 868 (Ky. 1958).
- ⁶ West v. Western Cas. and Sur. Co., 846 F.2d 387 (7th Cir. 1988) (applying Illinois law); Wilder v. Meyer, 779 F. Supp. 164 (S.D. Fla. 1991) (applying Florida law); Firemen's Ins. Co. of Newark, N. J. v. Jones, 245 Ark. 179, 431 S.W.2d 728, 33 A.L.R.3d 1059 (1968); Muraoka v. Budget Rent-A-Car, Inc., 160 Cal. App. 3d 107, 206 Cal. Rptr. 476 (2d Dist. 1984).
- ⁷ Werman v. Malone, 750 F. Supp. 21 (D. Me. 1990) (applying Maine law); Skipper v. U. S. Fidelity & Guaranty Co., 448 F. Supp. 74 (D.S.C. 1978) (applying South Carolina law); Beeck v. Kapalis, 302 N.W.2d 90 (Iowa 1981).
- ⁸ Miller v. Bank of Commerce, 387 S.W.2d 691 (Tex. Civ. App. Fort Worth 1965).

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